



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2016-0124; Notice 3]

General Motors LLC, Receipt of Third Petition for Inconsequentiality and Notice of Consolidation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of receipt of petition and decision denying request for deferral of determination.

SUMMARY: On January 2, 2018, TK Holdings Inc. (Takata) filed a defect information report (DIR), in which it determined that a defect existed in certain passenger-side air bag inflators that it manufactured, including passenger inflators that it supplied to General Motors, LLC (GM) for use in certain GMT900 vehicles. GM has petitioned the Agency for a decision that, because of differences in inflator design and vehicle integration, the equipment defect determined to exist by Takata is inconsequential as it relates to motor vehicle safety in the GMT900 vehicles, and that GM should therefore be relieved of its notification and remedy obligations. This notice serves to make the public aware of GM's pending request to the agency and the period for public comment. It does not address GM's substantive claims, nor legal arguments or interpretations asserted by GM.

DATES: The closing date for comments is [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written data, views, and arguments regarding this petition for inconsequentiality. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by one of the following methods:

- Internet: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590.
- Hand Delivery or Courier: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- Facsimile: (202) 493-2251.

You may call the Docket at (202) 366-9324.

Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Thus, submitting such information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the “Privacy and Security Notice” link in the footer of <http://www.regulations.gov>. DOT’s complete Privacy Act Statement is available for review in the Federal Register published on April 11, 2000 (65 FR 19477-78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. Comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will also be published in the Federal Register pursuant to the authority indicated at the end of this notice.

FOR FURTHER INFORMATION CONTACT:

For legal issues: Stephen Hensch, Office of the Chief Counsel, NCC-100, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, D.C. 20590 (telephone: (202) 366-5263).

For general information regarding NHTSA's investigation into Takata air bag inflator ruptures and the related recalls: <http://www.safercar.gov/rs/takata/index.html>.

SUPPLEMENTAL INFORMATION:

I. Background

On May 4, 2016, NHTSA issued, and Takata agreed to, an Amendment to the November 3, 2015 Consent Order (the "Amendment"), under which Takata is bound to declare a defect in all frontal driver and passenger air bag inflators that contain a phase-stabilized ammonium nitrate (PSAN)-based propellant and do not contain a moisture-absorbing desiccant. Such defect declarations are being made on a rolling basis, with the first declaration due May 16, 2016, the second declaration due December 31, 2016, and the third declaration due December 31, 2017. *See* Amendment at ¶ 14.

GM's May 2016 & January 2017 DIRs.

Takata timely submitted the first scheduled equipment DIRs on May 16, 2016. *See* Recall Nos. 16E-042, 16E-043, and 16E-044. Those DIRs included non-desiccated passenger inflators, designated as types SPI YP and PSPI-L YD, that were installed as original equipment on certain motor vehicles manufactured by GM (the "covered passenger inflators"), as well as other non-desiccated passenger inflators installed as original equipment on motor vehicles manufactured by a number of other automakers, which are not at issue here.

The Takata filing triggered GM's obligation to file a DIR for the affected GM vehicles. *See* 49 C.F.R. Part 573; Amendment at ¶ 16; November 3, 2015 Coordinated Remedy Order at ¶

46. GM ultimately submitted two DIRs on May 27, 2016. *See* Recall Nos. 16V-381 (for vehicles in Zone A) and 16V-383 (for vehicles in Zone B). On November 15, 2016, GM petitioned the Agency, under 49 U.S.C. §§ 30118(d), 30120(h) and 49 C.F.R. Part 556, for a decision that the equipment defect determined to exist by Takata is inconsequential as it relates to motor vehicle safety in the GMT900 vehicles. *See* GM’s Petition for Inconsequentiality and Request for Deferral of Determination Regarding Certain GMT900 Vehicles Equipped with Takata “SPI YP” and “PSPI-L YD” Passenger Inflators (the “First Petition for Inconsequentiality” or “First Petition”). In a Notice published in the Federal Register on November 28, 2016, the Agency published notice of the First Petition and granted two administrative requests, accepting the petition out of time and granting GM additional time to provide data in support of the petition. *See* 81 Fed. Reg. 85681.

On January 3, 2017, Takata timely submitted the second scheduled equipment DIRs for additional covered passenger inflators. *See* Recall Nos. 17E-001, 17E-002, and 17E-003. Again, the Takata filing triggered GM’s obligation to file a DIR for the affected GM vehicles. *See* 49 C.F.R. Part 573; Amendment at ¶ 16; Third Amendment to Coordinated Remedy Order at ¶ 32. GM ultimately submitted its DIRs on January 10, 2017, and notified NHTSA of its intention to file an inconsequentiality petition. *See* Recall Nos. 17V-010, 17V-019, and 17V-021.¹ Contemporaneous with its DIRs, GM submitted to the Agency a Petition for Inconsequentiality and Request for Deferral of Determination Regarding Certain GMT900 Vehicles Equipped with Takata “SPI YP” and “PSPI-L YD” Passenger Inflators Subject to January 2017 Takata Equipment DIR Filings (the “Second Petition for Inconsequentiality” or “Second Petition”).

¹ When a manufacturer files a petition for inconsequentiality, the affected DIR will not be made public unless and until the Agency denies the petition.

On September 11, 2017, the Agency published a notice of receipt of the Second Petition and, as GM’s Second Petition was virtually identical to its First Petition (both involved the same covered passenger inflators and same vehicle platform, relied upon the same purported evidence, and would rely upon the same forthcoming report), consolidated the Second Petition with the First Petition under Docket No. NHTSA-2016-0124. *See* 82 Fed. Reg. 42718.

GM’s January 9, 2018 DIRs

Takata timely submitted² the third scheduled equipment DIRs on January 2, 2018. Those DIRs included additional covered passenger inflators. Once more, the Takata filing triggered GM’s obligation to file a DIR for the affected GM vehicles. *See* 49 C.F.R. Part 573; Amendment at ¶ 16; Third Amendment to Coordinated Remedy Order at ¶ 32. GM submitted its DIRs on January 9, 2018.³ Therein, in accordance with 49 C.F.R. § 573.6(c)(8)(iii), GM notified NHTSA of its intention to file a petition for inconsequentiality and contemporaneously submitted to the Agency a Petition for Inconsequentiality Regarding Certain GMT900 Vehicles Equipped with Takata “SPI YP” and “PSPI-L YD” Passenger Inflators Subject to January 2018 Takata Equipment DIR Filings (the “Third Petition for Inconsequentiality” or “Third Petition”). GM’s Third Petition requested that NHTSA grant GM’s First, Second and Third Petitions or, in the alternative, that NHTSA defer its decision on the First, Second, and Third Petitions until March 31, 2018, which would allow GM time to complete further study and analysis.

II. Class of Motor Vehicles Involved

GM’s Third Petition involves certain “GMT900” vehicles that contain the covered passenger inflators (designated as inflator types “SPI YP” and “PSPI-L YD”). GMT900 is a GM-specific vehicle platform that forms the structural foundation for a variety of GM trucks and

² December 31, 2017 was a Sunday, and Monday, January 1, 2018 was a federal holiday.

³ When a manufacturer files a petition for inconsequentiality, the corresponding DIR will not be made public unless and until the Agency denies the petition.

sport utility vehicles, including: Chevrolet Silverado 1500, GMC Sierra 1500, Chevrolet Silverado 2500/3500, GMC Sierra 2500/3500, Chevrolet Tahoe, Chevrolet Suburban, Chevrolet Avalanche, GMC Yukon, GMC Yukon XL, Cadillac Escalade, Cadillac Escalade ESV, and Cadillac Escalade EXT. The Third Petition involves the following GMT900 vehicles:

- In Zone A, affected model year 2013 GMT900 vehicles. Zone A comprises the following states and U.S. territories: Alabama, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands (Saipan), and the U.S. Virgin Islands. *See* Amendment at ¶ 7.a.
- In Zone B, affected model year 2010 GMT900 vehicles. Zone B comprises the following states: Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia. *See* Amendment at ¶ 7.b.
- In Zone C, affected model year 2009 GMT900 vehicles. Zone C comprises the following states: Alaska, Colorado, Connecticut, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming. *See* Amendment at ¶ 7.c.

III. Summary of GM's Third Petition for Inconsequentiality

GM's Third Petition relies on arguments, data, and analysis in its First and Second Petitions (and supplemental brief thereto), information submitted to the Agency during briefings with NHTSA, and additional arguments and engineering analysis as presented in the Third

Petition. *See* Third Petition at 1, 3. According to the Third Petition, GM’s originally planned Orbital ATK (“OATK”) inflator study is now complete,⁴ which GM argues demonstrates the covered passenger inflators in subject GMT900 vehicles “will continue to operate safely for decades, even in the highest temperature and humidity regions”—*i.e.*, that the covered passenger inflators, as integrated into the GMT900 vehicles, do not present an unreasonable risk to safety. *See id.* at 3.

According to the Third Petition, GM’s position is based upon the following: field data, including GM’s estimated 63,000 Takata passenger air bag inflator deployments in GMT900 vehicles without a reported rupture and ballistic tests of 4,205 covered passenger inflators without a rupture or sign of abnormal deployment, and results of the OATK study of inflators artificially exposed to additional humidity and temperature cycling without a rupture or abnormal deployment, and accompanying statistical interpretation of those results. *Id.* at 12–15.

GM further states that the covered passenger inflators are not used by any other original equipment manufacturer and, further, that the covered inflators have a number of unique design features that influence burn rates and internal ballistic dynamics, including greater vent-area-to-propellant-mass ratios, steel end caps, and thinner propellant wafers. *See id.* at 6. In addition, GM states that the physical environment of the GMT900 vehicles better protects the covered passenger inflators from temperature cycling that can lead to propellant degradation and, ultimately, inflator rupture. *See id.* at 7.

⁴ To supplement its internal analysis, GM retained a third-party expert, OATK, to conduct a long-term aging study to estimate the service life expectancy of the covered passenger inflators in the GMT900 vehicles. *See* First Petition at 12. When NHTSA previously deferred a decision on GM’s First Petition, one of the conditions of that deferral was that GM provide NHTSA with monthly updates on this study.

This notice serves to make the public aware of GM’s pending request to the agency and the period for public comment. Accordingly, it does not address the substantive claims, or legal arguments or interpretations, asserted by GM.

IV. Consolidation

GM’s Third Petition for Inconsequentiality involves newer model years of the same covered passenger inflators (*i.e.*, frontal passenger inflator types “SPI YP” and “PSPI-L YD”), the same vehicle platform (*i.e.*, the GMT900), and similar purported evidence to support the safety of the inflators (*e.g.*, estimated field deployments, ballistic testing), and relies upon the same OATK study as GM’s First and Second Petitions. Accordingly, it is appropriate to evaluate the First, Second, and Third Petitions together. In the interest of clarity, consistency, and efficiency, the Agency is consolidating the Third Petition with the First and Second Petitions (the “Consolidated Petitions”) under Docket No. NHTSA-2016-0124.

V. Request to Defer Decision on Petition

GM states it believes the evidence it has thus far presented “fully supports” the relief it requests in the Consolidated Petitions. *Id.* at 17. Alternatively, GM requests that NHTSA defer its decision until March 31, 2018 *Id.* According to GM, this would allow it to conduct further studies and analysis that can develop an estimate of the covered inflators’ likely service life beyond 30 years, as well as a predictive model of service-life estimates to account for inflator design and vehicle integration. *See id.*

NHTSA’s grant of GM’s request to defer a decision on the First Petition until August 31, 2017 so that GM could provide additional evidence, including concluding the OATK study, was unprecedented. As NHTSA noted in granting that request, “[o]rdinarily, under 49 CFR 556.4(b)(5), an inconsequentiality petition must set forth all data, views, and arguments

supporting that petition”⁵ at the time of the filing. Decision deferrals for inconsequentiality petitions are not permitted, and permitting that practice would provide manufacturers with an opportunity to endlessly delay remedy of vehicles in need of repair. Here, one important factor in NHTSA’s decision to grant the deferral was GM’s assertion that remedy parts would quickly be available to the public in the event the petition was denied. NHTSA’s extraordinary grant of additional time to present information allowed GM until August 31, 2017 to provide data, and that date has passed. However, following notice and an opportunity for comment, any decision on an inconsequentiality petition can be reversed based on the presentation of new evidence. 49 CFR 556.8. Accordingly, GM’s request that NHTSA defer decision on the Third Petition until March 31, 2017 is herein denied. However, until NHTSA renders a decision on GM’s Petitions, the Agency will continue to accept and, to the extent feasible, consider documents submitted relevant to the Petitions, which NHTSA will make available for public comment in Docket No. NHTSA-2016-0124.

Accordingly, NHTSA hereby gives notice of its receipt of General Motors LLC’s Petition for Inconsequentiality Regarding Certain GMT900 Vehicles Equipped with Takata “SPI YP” and “PSPI-L YD” Passenger Inflators Subject to January 2018 Takata Equipment DIR Filings. And it is hereby *ordered* that:

1. The period for public comment on GM’s Third Petition shall run from the publication date of this notice through [INSERT DATE 30 DAYS AFTER PUBLICATION IN FEDERAL REGISTER];
2. GM’s Third Petition is consolidated with the First and Second Petitions; and

⁵ *General Motors LLC, Receipt of Petition for Inconsequentiality and Decision Granting Request To File Out of Time and Request for Deferral of Determination*, 81 Fed. Reg. 85681, 85683-84.

3. GM's request for a deferral of NHTSA's decision on its First, Second, and Third Petitions to March 31, 2018, is *denied*.

Authority: 49 U.S.C. 30101, *et seq.*, 30118, 30120(h), 30162, 30166(b)(1), 30166(g)(1); delegation of authority at 49 C.F.R. 1.95(a); 49 C.F.R. Parts 556, 573, 577.

Issued: April 3, 2018.

Jonathan C. Morrison,
Chief Counsel.

Billing Code: 4910-59-P

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